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Spies Who Aren't

The current furor between Central Intelligence Director William J. Casey and several news organizations over the dissemination of classified material is the latest in a long line of disputes that pit national secrets against the public's need for information in order to make policy choices. The Reagan Administration has been particularly eager to control information and to close leaks. But other administrations have taken similar actions in the past, and other administrations can be expected to take similar actions in the future. Since this issue will not go away, it is worth thinking about what is involved and what might be done about it.

No sensible person would argue that all defense secrets should be made public. The government has a right and a duty to protect some secrets, and it is in the national interest for it to do so. At the same time, informing the public on matters of national defense is also desirable. In an open society, Congress, members of the government and news organizations provide considerable amounts of information that foreign governments would have great difficulty in gathering on their own. Can speech and security be reconciled?

The approach of Casey and others in the Administration is to treat everyone giving out "classified" information as a spy. They see no difference between John A. Walker Jr., who sold secrets to the Soviets for nearly 20 years; Samuel L. Morison, an intelligence analyst who leaked a satellite photo to the press, and NBC News, which reported details of an espionage case that the Soviets already knew. Obviously the three cases are very different.

The law in this area is based on the Espionage Act of 1917 as amended in 1950. During the 1949 congressional debate on the amendments, Atty. Gen. Tom Clark said: "Nobody other than a spy, saboteur or other person who would weaken the internal security of the nation need have any fear of prosecution under either existing law or the provisions of this bill." Tell that to Morison, who was sentenced to prison even though his disclosure of the satellite photograph added nothing to Soviet knowledge of American spying capabilities.

To set things straight, several additional criteria need to be added to the muddled espionage laws. Because government overclassification is endemic, a useful question would be whether the disclosed classified material was properly classified in the first place. Under this standard, Daniel Ellsberg would not have been prosecuted as a spy for leaking the Pentagon Papers. They shouldn't have been classified. (The case against Ellsberg was dismissed because of government misconduct.)

Another pertinent question would be the value of the disclosed material to foreign powers. If this standard had been applied in the Morison case, there would have been no criminal charge. (The Russians had already bought the technical manual for the reconnaissance satellites from a real spy.) If this standard were now in effect, Casey would not be threatening to prosecute NBC or the Washington Post for reporting on the case of Ronald W. Pelton, an accused spy now on trial in Baltimore. The damage in the Pelton case was done when the Russians got secret information about American technology for eavesdropping on Soviet communications. They learn nothing new when this is revealed to the American public.

In 1967 the Supreme Court wrote, "Implicit in the term 'national defense' is the notion of defending those values and ideals which set this nation apart." The government should prosecute real spies who do in fact damage the nation, but it should not interfere with those who are serving the public and causing no harm.